

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ARTURO TORRES OCHOA,

Plaintiff,

vs.

KONRAD DAVID, *et al.*,

Defendants.

3:10-cv-00483-ECR-VPC

ORDER

Plaintiff is a prisoner proceeding *pro se* and has submitted an application to proceed *in forma pauperis* (docket #1) as well as a complaint(docket #1-1) attempting to initiate a civil rights action pursuant to 42 U.S.C. § 1983. However, on at least three (3) occasions, the court has dismissed civil actions commenced by plaintiff while in detention as frivolous or for failure to state a claim upon which any relief may be granted.¹

Under 28 U.S.C. § 1915(g), “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that

¹ See *Ochoa v. Cook, et al.*, 3:02-cv-00450-DWH-RAM; *Ochoa v. Willis, et al.*, 3:02-cv-00545-ECR-VPC (both dismissed for failure to state a claim upon which relief may be granted); *Ochoa v. Putter C/O, et al.*, 3:10-cv-00364-HDM-RAM (dismissed as delusional and factually frivolous). The court takes judicial notice of its prior records in the above matters.

1 was dismissed on the grounds that is frivolous, malicious, or fails to state a claim upon which relief may
2 be granted,” he may not proceed *in forma pauperis* and instead must pay the full \$350.00 filing fee in
3 advance, unless he is under imminent danger of serious physical injury. “Section 1915(g)’s cap on prior
4 dismissed claims applies to claims dismissed both before and after the statute’s effective date” of April
5 26, 1996. *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

6 Plaintiff cannot proceed *in forma pauperis* in this action or any other civil action filed
7 in any federal court because he has had three (3) or more prior actions dismissed for failure to state a
8 claim upon which relief may be granted, or as frivolous or malicious. Plaintiff has not alleged, and the
9 subject matter of this action does not indicate, that he is in imminent danger of serious physical injury.
10 He must pre-pay the filing fee in full.

11 **IT IS THEREFORE ORDERED** that plaintiff’s application to proceed *in forma*
12 *pauperis* (docket #1) is **DENIED**.

13 **IT IS FURTHER ORDERED** that this action will be dismissed without prejudice unless
14 plaintiff pays the \$350.00 filing fee in full within **thirty (30) days** of entry of this order.

15 **IT IS FURTHER ORDERED** that the Clerk of Court shall send plaintiff two copies of
16 this order. Plaintiff shall make the necessary arrangements to have one copy of this order attached to
17 the check paying the filing fee.

18 **IT IS FURTHER ORDERED** that the Clerk of the Court shall retain the complaint.

19 **IT IS FURTHER ORDERED** that the “letters” filed by plaintiff (docket #s 3, 4, 5) are
20 **STRICKEN**.

21
22 DATED this 14th day of September, 2010.

23
24 
25 UNITED STATES DISTRICT JUDGE
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